

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BEVERLY ANETTE RAINES, Principal,)
Brighton School, SANDRA BOSLEY, Former) CASE NO. C09-203Z
Interim Principal at Dunlap, CHALICE)
STALLWORTH, Elementary School Teacher,)
RONALD PLEASANT, Teacher at Cleveland,) ORDER
MARK DELLA, Former Deputy Security)
Manager, DEMETRICE THOMAS-DANZY,)
Correctional Education Associate at)
Interagency Academy, AUDREY WEAVER,)
Security Specialist, Chief Sealth, JACQUE)
JOHNSON, Security Specialist, Ballard, and)
MARCUS PERKINS, Recently Fired)
Custodian,)
Plaintiffs,)
v.)
SEATTLE SCHOOL DISTRICT NO. 1, a)
municipal corporation,)
Defendant.)

THIS MATTER comes before the Court on the defendant Seattle School District No. 1's (the District) motion for partial summary judgment, docket no. 193; the District's motion to strike the plaintiff Demetrice Thomas-Danzy's response as untimely, docket no. 202; and the District's

01 motion to strike portions of Thomas-Danzy's response, docket no. 202. Having reviewed all
02 papers filed in support of, and in opposition to, each motion, the Court enters the following Order.
03

04 **Background**

05 This case arises from multiple plaintiffs' employment with the District. One plaintiff,
06 Demetrice Thomas-Danzy, alleges that the District violated the Equal Pay Act (EPA) and breached
07 its implied-in-fact contract with her. She also asserts a promissory estoppel claim.

08 **A. Relevant Factual Background**

09 **1. Chronology of Events**

10 Demetrice Thomas-Danzy is a Corrections Education Associate (CEA) for the District.
11 Declaration of Demetrice Thomas-Danzy ¶ 2, docket no. 199. She has a business administration
12 certificate from Griffen Business College in Seattle, WA, but does not have a bachelor's degree or
13 teaching certificate. Declaration of Gregory Jackson Ex. 1 (Thomas-Danzy Dep. Vol. 2, p.
14 109-10), docket no. 194. As a CEA, the District considers her classified paraprofessional staff,
15 where she assists certificated teaching staff inside or outside the classroom. Declaration of Elaine
16 Williams Ex. 1, docket no. 198.

17 Between 2004 and November 2006, Thomas-Danzy taught Reading. See Thomas-Danzy
18 Decl. Ex. 2; Jackson Decl. Exs. 5, 6. In November 2006, Principal Cindy Ortega told
19 Thomas-Danzy that she could not teach Reading or any other academic subject. Jackson Decl.
20 Ex. 6. Subsequently, on November 9, 2006, Thomas-Danzy stopped teaching Reading. Id. at
21 Ex. 5. Between 2004 and the spring of 2010, Plaintiff also taught Behavior Modification.
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01 Thomas-Danzy Decl. ¶ 11 & Exs. 1, 3, 6. In these classes, Thomas-Danzy tracked her students' 02 assignments and gave grades for those assignments. *Id.* at ¶ 6 & Ex. 3. The District also gave her 03 scheduled "prep" time to prepare for her classes, which the District also provided to classroom 04 teachers. *Id.* at ¶ 3.

05 The District did not consider Behavior Modification a core academic subject.¹ Declaration 06 of Cynthia Nash ¶ 4, docket no. 204. Because it was not a core academic class, the District 07 allowed the class to be taught by suitably trained individuals who did not have a state teaching 08 certificate. *Id.* The school's principal and certified teaching staff, not CEAs, developed the 09 curriculum or assignments for these classes. *Id.*

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11 In March 2007, Thomas-Danzy filed a grievance with her union to complain that, by 12 assigning her to teach classes, the District assigned her to work outside of her job description 13 without appropriate pay. Thomas-Danzy Decl. Ex. 4. She believed that the District did this 14 because she was female. *Id.* at ¶ 10. She also thought that the District treated male CEAs 15 differently because male CEAs did not appear to work as classroom teachers. *Id.* In October 16 2007, Thomas-Danzy filed a Charge of Discrimination with the Equal Employment Opportunity 17
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¹ The District provides this, and other evidence, with its Reply brief. The general rule is that "where new evidence is presented in a reply to a motion for summary judgment, the district court should not consider the new evidence without giving the non-movant an opportunity to respond." *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (internal quotations omitted). A court may, however, consider new evidence that rebuts arguments made in opposition to the motion. *See Equal Emp't Opportunity Comm'n v. Creative Networks, LLC*, No. 05-3032, 2008 WL 5272780, at *2 (D. Ariz. Dec. 15, 2008) (holding that defendants' submission of evidence presented in reply was proper because the evidence rebutted arguments plaintiffs made in their opposition to defendants' motion). Accordingly, because the District presents evidence against Thomas-Danzy in its Reply to rebut Thomas-Danzy's claims that she performed work "substantially equal" to a Classroom Teacher's work, the Court considered the District's evidence.

01 Commission (EEOC), accusing the District of sex discrimination. Jackson Decl. Ex. 3. In
02 February 2008, the EEOC dismissed this charge. *Id.* at Ex. 4.

03 Before the 2008-2009 school year, the District assigned Thomas-Danzy to work at another
04 school. Thomas-Danzy Decl. ¶¶ 15-16, Ex. 7. On October 5, 2008, the District transferred
05 Thomas-Danzy again. *Id.* at ¶¶ 15-16, Ex. 7-8. Thomas-Danzy told a representative of the
06 District, Laurie Taylor, that the transfer would negatively impact Thomas-Danzy's employment
07 with the District, and stated that Ms. Taylor previously made a "verbal promise" to "protect [her]
08 future position along with [her] seniority as a CEA." *Id.* at Ex. 8. Between October 20, 2008 and
09 December 5, 2008, the District "sent [Thomas-Danzy] home" and stopped paying her. *Id.* at ¶¶ 17,
10 19. The District did not place her on unpaid leave, and she never requested a leave of absence.
11 *Id.* at ¶ 17. Furthermore, the District did not allege misconduct against, discipline, or terminate
12 Thomas-Danzy. *Id.* Between October 20, 2008 and December 5, 2008, Thomas-Danzy lost at
13 least 256 hours of compensation. *Id.* at ¶ 19.

15 Throughout the fall of 2008, the District employed and compensated male CEAs. *Id.* at
16 ¶ 18. In October 2008, the District hired Daniel Gotkin. *Id.* Gotkin was a male CEA who had
17 less seniority than Thomas-Danzy. *Id.* Thomas-Danzy returned to work in March 2008. *Id.* at
18 ¶ 20-21. The District continues to employ Thomas-Danzy to this day. *Id.*

19 **2. CEA and Classroom Teacher Job Descriptions and Pay**

20 The CEA job description stated that a CEA was "[u]nder supervision of the school principal
21 and/or designated certificated staff, [and] perform[ed] varied behavior management and
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01 skills-training services” for delinquent youth. Williams Decl. Ex. 1, at 2. CEAs were allowed to
02 “lead students in educational activities but [were] not permitted to relieve certificated teachers or
03 administrators of their responsibility for designing and modifying instructional programs, making
04 instructional strategy decisions, and overseeing and formally evaluating student progress.” *Id.*
05 CEAs in “teaching-related positions” were “required to . . . perform under the guidance and
06 supervision of certificated teachers or administrators.” *Id.*

07 A CEA’s job exposed CEAs to “distraught, difficult, violent, abusive and/or dangerous
08 adults and students.” *Id.* CEAs needed to be flexible and able to deal with students with a wide
09 range of academic and behavior skills. *Id.* The District required CEAs to have certain skills and
10 abilities, including dealing effectively with teenage behavior, working effectively with
11 disadvantaged students and families, facilitating support services, and supporting learning and
12 behavior shaping activities. *Id.* at 5. The District also required that CEAs have 90 quarter hours
13 of college credits and two years of experience working with teenage youth. *Id.* at 4.

15 Classroom Teachers, on the other hand, fostered and enhanced an effective learning
16 environment; facilitated the development or revision of curriculum and instructional materials;
17 established learning objectives and standards; provided instruction; and counseled, disciplined, and
18 supervised students. *Id.* at Ex. 2. Classroom Teachers also evaluated student performance and
19 progress. *Id.* The District required Classroom Teachers to have knowledge of their assigned
20 subject area, effective behavior management techniques, and rules and procedure for student safety.
21 *Id.* Classroom Teachers also needed the following skills: proficiency in reading, writing, and oral

01 communications; communicating with parents or guardians; and designing and implementing
02 lesson plans for students with a wide range of academic achievement. *Id.*

03 Classroom Teachers also needed to be able to deal positively and confidently with students,
04 be fair and consistent, adapt to change, remain flexible, manage student behavior, maintain a safe
05 learning environment, provide instruction, demonstrate techniques, direct assistants, and establish
06 and maintain positive working relationships. *Id.* Classroom Teachers needed at least a
07 bachelor's degree that prepared the teacher to teach in a diverse urban school system. *Id.* Some
08 positions also required additional education or professional experience. *Id.*

10 The salary scale of a CEA was fixed by a Collective Bargaining Agreement (CBA). *Id.* at
11 Ex. 3. Sex was not a factor in calculating salaries under this CBA. *See id.* A Classroom
12 Teacher's salary scale was also fixed by a CBA. *Id.* at Ex. 4. Sex was not a factor in calculating
13 salaries under this CBA. *See id.* The Classroom Teacher's salary scale is higher than the CEA's
14 because of the Classroom Teacher's increased teaching, educational, and professional certification
15 requirements. *See id.* at ¶ 12, Exs. 1-4.² No evidence in the record provides the actual pay for
16 Thomas-Danzy or any other CEA or Classroom Teacher.

17 **B. Relevant Procedural History**

18 On February 17, 2009, Thomas-Danzy filed a Complaint (docket no. 1) against the District.
19 This Complaint did not contain an EPA claim, but described (1) the events leading up to
20 Thomas-Danzy filing a grievance with her union in March 2007, and (2) the period in 2008 when

22 ² These facts are undisputed for the purposes of the District's motion because the Court finds no evidence in the record that contradicts them.

01 the District sent Thomas-Danzy home without pay. Compl. ¶¶ 54-62, 137-38, 140-41, 147, docket
02 no. 1. On January 10, 2011, Thomas-Danzy filed a Third Amended Complaint (docket no. 133),
03 which contained an EPA claim.

04 On October 27, 2011, the District filed this motion for partial summary judgment (docket
05 no. 193), with a noting date of November 18, 2011. On November 18, 2011, Thomas-Danzy filed
06 her Response (docket no. 198). On the same date, the Court issued a minute order (docket no. 201)
07 renoting the District's motion (docket no. 193) to December 2, 2011. On December 2, 2011, the
08 District filed its Reply, which included a motion to strike Thomas-Danzy's response as untimely
09 (docket no. 202), and a motion to strike certain exhibits from Thomas-Danzy's Response (docket
10 no. 202). Thomas-Danzy did not respond to either of these motions.

12 **Discussion**

13 **A. The District's Motion to Strike Thomas-Danzy's Response as Untimely**

14 The District has moved to strike Thomas-Danzy's response as untimely. Under Local Rule
15 (7)(d)(3), "opposition papers shall be filed and served not later than the Monday before the noting
16 date." Although Thomas-Danzy filed her response on the noting date, the Court renoted the
17 District's motion for partial summary judgment to December 2, 2011. *See* Order, docket no. 201.
18 By virtue of that order, Thomas-Danzy's Response is timely.

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01 **B. The District's Motion to Strike Exhibits Supporting Thomas-Danzy's Response**

02 The District has also moved, pursuant to Fed. R. Civ. P. 56, to strike exhibits 1-6 and 8-11 to
03 Thomas-Danzy's response.³ Under Fed. R. Civ. P. 56(c)(2), a party can object to cited material if
04 that material would be inadmissible. Rule 56(c)(4) requires, in pertinent part, that an affidavit or
05 declaration "set out facts that would be admissible in evidence." The only exhibit the Court strikes
06 is Exhibit 5. Thomas-Danzy offers Exhibit 5, a proposed settlement agreement between the
07 parties, to prove that the District is liable for her EPA claim. Such settlement offers are
08 inadmissible to prove liability. See Fed. R. Evid. 408.

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10 The Court declines to strike the remaining exhibits identified by the District. Exhibits 1, 2,
11 and 4, regardless of the time period they relate to, have some tendency to prove that Thomas-Danzy
12 was teaching classes outside of her job description, which in turn goes to whether the District paid
13 Thomas-Danzy less than male Classroom Teachers for substantially equal work. Additionally, the
14 District argues that Exhibit 3 does not provide evidence that Thomas-Danzy issued grades. This
15 argument, however, is one of the evidence's weight, not its admissibility. Finally, the District
16 argues that Exhibits 6 and 8-11 are inadmissible hearsay. The Court admits the Exhibits for
17 purposes of the motion for summary judgment. See *Fraser v. Goodale*, 342 F.3d 1032, 1036
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20 ³ Exhibit 1 is an October 12, 2004 letter from Principal Cindy Ortega stating that the District employs Thomas-Danzy as a CEA
21 that teaches Behavior Modification class. Exhibit 2 is a student letter stating that Thomas-Danzy taught Behavior Modification
22 until the second semester of 2007. Exhibit 3 is a Student Progress Report that Thomas-Danzy used to track assignments in her
Behavior Modification class. Exhibit 4 is a photocopy of the union grievance Thomas-Danzy filed to complain about teaching
outside of her job description. Exhibit 5 is a proposed settlement agreement between the parties, which the District offered
Thomas-Danzy to settle her March 2007 union grievance. Exhibit 6 is an April 28, 2009 recommendation letter from a math
teacher that describes Thomas-Danzy's work as a CEA and behavioral modification teacher. Exhibits 8-11 include email
correspondence between Thomas-Danzy and District employees.

01 (9th Cir. 2003) (at summary judgment, courts focus on the admissibility of contents, not form, of
02 evidence).

03 **C. The District's Motion for Summary Judgment**

04 The District moves for summary dismissal of Thomas-Danzy's claims on four grounds:
05 (1) Thomas-Danzy's EPA claim is barred by the EPA's statute of limitations; (2) Thomas-Danzy
06 fails to establish a prima facie EPA claim; (3) Thomas-Danzy fails to provide evidence of a breach
07 of contract; and (4) Thomas-Danzy's promissory estoppel claim is incongruent with her breach of
08 contract claim and, even if she could bring her claim, she cannot establish the prerequisites of
09 promissory estoppel.

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11 **1. Standard of Review**

12 The Court shall grant summary judgment if no genuine issue of material fact exists and the
13 moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In support of a
14 motion for summary judgment, the moving party need not negate the opponent's claim, *Celotex*
15 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986); rather, the moving party will be entitled to judgment if
16 the evidence is not sufficient for a jury to return a verdict in favor of the opponent, *Anderson v.*
17 *Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). When the record, taken as a whole, could not lead
18 a rational trier of fact to find for the non-moving party, summary judgment is warranted. *See*
19 *Beard v. Banks*, 548 U.S. 521, 529 (2006).

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01 **2. EPA Statute of Limitations**

02 The EPA limits recovery of wages to the two years preceding the plaintiff's complaint.
03 29 U.S.C. § 255(a). If the EPA claim arises out of a party's willful violation, recovery is limited to
04 the three years preceding the plaintiff's complaint. *Id.* A later complaint "relates back" to the
05 original if the claims in the later pleading "arose out of the conduct, transaction, or occurrence set
06 out—or attempted to be set out—in the original pleading." Fed. R. Civ. P. 15(c)(1)(B); *O'Donnell v.*
07 *Vencor Inc.*, 466 F.3d 1104, 1112 (9th Cir. 2006).

08 Here, Thomas-Danzy's Third Amended Complaint relates back to her first complaint.
09 Thomas-Danzy's Complaint, filed on February 19, 2009, described events leading up to and
10 including her March 2007 union grievance filing, which included her teaching of reading and
11 behavioral modification classes as a CEA. It also described the period in late 2008 when Plaintiff
12 was sent home without pay. The EPA claim she asserted in her Third Amended Complaint was
13 based on these same events. *See* Third Am. Compl. ¶¶ 9.1-9.8, docket no. 132. Thomas-Danzy's
14 first complaint gave the District adequate notice of the substance of, and factual basis for, her
15 claims. The District is not prejudiced from the addition of a claim arising out of the same facts
16 from her first complaint. *See O'Donnell*, 466 F.3d at 1112.

17 Thus, under the EPA statute of limitations, Thomas-Danzy's claim is permissible to the
18 extent that claim is based upon events from the two years preceding her first complaint (violations
19 on or after February 19, 2007), or, if she can establish that the District willfully violated the EPA,
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01 the three years preceding her complaint (violations on or after February 19, 2006). Any claim
02 relating to classes she taught before these dates are time-barred by the statute.

03 **3. Failure to State a Prima Facie EPA Claim**

04 To establish a prima facie EPA claim, Thomas-Danzy must show that the District paid
05 different wages to employees of opposite sexes for equal work “on jobs the performance of which
06 requires equal skill, effort, and responsibility, and which are performed under similar working
07 conditions.”⁴ *Corning Glass Works v. Brennan*, 417 U.S. 188, 195 (1974); *see also* 29 U.S.C.
08 § 206(d)(1). The prima facie case is limited to a comparison of the jobs in question and “does not
09 involve a comparison of the individuals who hold the jobs.” *Stanley v. Univ. of S. Cal.*, 178 F.3d
10 1069, 1074 (9th Cir. 1999). The jobs held by employees of opposite sexes need not be identical,
11 but a plaintiff bears the burden of showing that the jobs being compared are “substantially equal.”
12 *Stanley*, 178 F.3d at 1074; *Hein v. Or. Coll. of Educ.*, 718 F.2d 910, 913 (9th Cir. 1983).

14 Here, Thomas-Danzy tries to establish a prima facie EPA claim on the following two
15 grounds: (1) as a CEA, although she performed “substantially equal” work as male Classroom
16 Teachers between January 2008 and June 2010, the District did not pay her the same as those
17 teachers; and (2) the District paid her less than Daniel Gotkin, a male CEA, when the District put
18 her on unpaid leave between October 20, 2008 and December 5, 2008.⁵

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⁴ One circuit requires plaintiffs to also provide a specific male or female “comparator” to establish a prima facie EPA claim. *See Strag v. Bd. of Trustees*, 55 F.3d 943, 948 (4th Cir. 1995). The Ninth Circuit does not explicitly require a comparator, but does
21 closely scrutinize “a comparison to a specifically chosen [comparator] . . . to determine its usefulness.” *Hein*, 718 F.2d at 916.

22 ⁵ Thomas-Danzy also argues that the District did not treat male CEAs the same as her because the District did not assign male
CEAs to work as teachers. She fails, however, to provide the Court with evidence that male CEAs were paid more than she was,
evidence that is material to any EPA claim.

01 i. Male Classroom Teachers

02 Thomas-Danzy cannot establish that the District violated the EPA when it assigned her to
03 teach Behavior Modification. The question of whether two jobs are substantially equal is one that
04 must be decided on a case-by-case basis.⁶ *Hein*, 718 F.2d at 913. Under the EPA, jobs requiring
05 different skills are not substantially equal. *Id.* at 914. Significantly, a plaintiff does not make a
06 prima facie case “by showing that the employees of opposite sex possess equivalent skills.” *Id.*
07 The statute “explicitly applies to *jobs* that require equal skills, and not to employees that possess
08 equal skills.” *Id.* (emphasis added). The only comparison of skills required is “a comparison of
09 skills required by a job.” *Id.*

10 Here, Thomas-Danzy cannot show that her work teaching Reading and Behavior
11 Modification classes was “substantially equal” to a Classroom Teacher’s work. Classroom
12 Teacher and CEA jobs require different skills. Required CEA skills include dealing effectively
13 with youth behavior, working effectively with disadvantaged students and families, facilitating
14 support services, and supporting learning and behavior shaping activities. The Classroom Teacher
15 job, however, requires a broader and deeper skill set. These skills primarily include lesson plan
16 design, curriculum design, and the ability to differentiate curriculum and lesson plans to meet the
17 diverse needs of students. Classroom Teachers must also evaluate student performance and assign
18 final grades, manage student behavior, maintain a safe learning environment, provide instruction,
19 and direct assistants in their classroom.

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⁶ Appellate courts review this finding under a “clearly erroneous” standard. *Hein*, 718 F.2d at 914.

Moreover, the Classroom Teacher job requires more education than the CEA job. The Classroom Teacher position requires, at a minimum, a bachelor's degree and state teaching certificate, while the CEA job does not. Classroom Teachers also have greater responsibility than CEAs. For example, Classroom Teachers developed and revised curriculum and instructional material; established learning objectives and standards; provided instruction; and counseled, disciplined, and supervised students. Nothing in the record shows that the District gave Thomas-Danzy similar responsibilities in her role teaching any of her classes.⁷

Even if Thomas-Danzy could establish that her work was "substantially equal" to a Classroom Teacher's, the District's wage differential is justified under the EPA. Once a plaintiff establishes a prima facie case of an EPA violation, the burden shifts to the employer to prove that the differential in wages is justified under one of the following four exceptions: the different wages are made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; or (iv) a differential based on any factor other than sex.⁸

Corning Glass Works, 417 U.S. at 196; Hein, 718 F.2d at 913; see also 29 U.S.C. § 206(d)(1).

⁷ Thomas-Danzy does provide evidence that she tracked and evaluated student assignments. See Thomas-Danzy Decl. ¶¶ 5, 6, Exs. 2-3. This evidence shows that Thomas-Danzy performed some functions of a Classroom Teacher while she taught Behavior Modification classes. This evidence does not, however, establish that Thomas-Danzy's CEA job required the same skill and knowledge, or was performed under the same working conditions, as a Classroom Teacher's. Thomas-Danzy also presented evidence that she received "prep" time, just like Classroom Teachers. See id. ¶ 3. Receiving "prep" time, however, does not show that Thomas-Danzy's job was "substantially equal" to that of a Classroom Teacher.

⁸ An employee may rebut an employer's showing that differential pay is statutorily justified with evidence that the employer intended to discriminate and that the exception applied is merely pretext for discrimination. Maxwell v. City of Tucson, 803 F.2d 444, 446 (9th Cir. 1986). Here, however, the record conclusively reveals a non-discriminatory reason for the District's decision to pay Classroom Teachers more than CEAs. While Thomas-Danzy felt she was being discriminated against generally, and observed that other male CEAs were not asked to teach outside their job description, no evidence suggests that the District's justifications for the pay differentials were pretext for discrimination.

01 This inquiry is a question of fact.⁹ *Hein*, 718 F.2d at 913.

02 Here, the District's wage differential is justified because the different wages are based on
03 factors other than sex. The pay differential between CEA's and Classroom Teachers is due not to
04 one's sex, but to the greater skill, knowledge, and education required to be a classroom teacher.
05 *See* Williams Decl. ¶ 12 & Exs. 1-4. Classroom Teachers are also required to have a professional
06 teaching certificate from the state. *See id.* Classroom Teachers also receive higher wages
07 because of their greater job responsibilities and duties. *See id.* Moreover, sex is not a factor in
08 determining the salary for either CEAs or Classroom Teachers. *See id.* ¶ 7, Ex. 3 (CEA) and ¶ 9,
09 Ex. 4 (Classroom Teacher).¹⁰

10 ii. **Male CEA Daniel Gotkin**

11 Additionally, Thomas-Danzy cannot establish that the District violated the EPA when it paid
12 male CEA Daniel Gotkin to work while Thomas-Danzy was on unpaid leave. Thomas-Danzy
13 cannot establish a prima facie EPA violation because she did not work and has no wages on which
14 to base her EPA claim. Thomas-Danzy also fails to provide the Court with evidence that Mr.
15 Gotkin received *more* pay than she would have received had she worked during this same time.
16 Because she cannot establish the essential elements of her claim with respect to Mr. Gotkin, her
17 claim fails as a matter of law.¹¹

18 ⁹ Since this is a question of fact, it is reviewed under the "clearly erroneous" standard. *Hein*, 718 F.2d at 913.

19 ¹⁰ In its Reply, the District argues that Thomas-Danzy's Response contradicts her previous deposition testimony and should be
20 considered a sham. The Court need not reach these issues because the Court's decision to grant the District's motion considered
21 the alleged contradictions and therefore renders these issues moot.

22 ¹¹ Thomas-Danzy argues that the District cannot demonstrate a gender-neutral reason for why it permitted Mr. Gotkin to return to
23 work while sending Thomas-Danzy home. This argument is irrelevant to Thomas-Danzy's EPA claim. Under the EPA,

01 **D. Thomas-Danzy's Breach of Implied-in-Fact Contract Claim**

02 In her complaint, Thomas-Danzy asserts that the District entered into an implied-in-fact
03 employment contract. *See* Third Am. Compl. ¶ 19.2. The District argues that Thomas-Danzy
04 fails to offer evidence that the District breached such a contract with Thomas-Danzy, while
05 Thomas-Danzy argues that the District agreed to provide Thomas-Danzy employment as long as
06 she performed her job in good faith. Specifically, Thomas-Danzy claims that Laurie Taylor
07 promised to “protect [Thomas-Danzy’s] future position along with [her] seniority as a CEA.”
08 Thomas-Danzy Decl. Ex. 8.

09 In Washington, “the elements of a contract implied in fact are: (1) the defendant requests
10 work, (2) the plaintiff expects payment for the work, and (3) the defendant knows or should know
11 the plaintiff expects payment for the work.”¹² *Young v. Young*, 164 Wn.2d 477, 486 (2008).
12 Here, Thomas-Danzy fails to establish two essential elements of an implied-in-fact contract.
13 Nothing in the record shows (1) that the District requested Thomas-Danzy to work during the
14 October 20, 2008 through December 5, 2008 period the District sent Thomas-Danzy home without
15 pay; or (2) that Thomas-Danzy expected the District to pay her for such work.

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18 Thomas-Danzy could rebut the District’s provided justification for pay differentials with evidence that those *justifications* were
19 pretext for discrimination. Her argument does not relate to any pretext for the District’s justifications for its pay differentials,
20 but rather relates to the District’s decision to put her on unpaid leave.

21 ¹² The Washington Supreme Court synthesized these elements from the more traditional definition of a contract implied-in-fact,
22 which

23 is an agreement depending for its existence on some act or conduct of the party sought to be charged and arising by
24 implication from circumstances which, according to common understanding, show a mutual intention on the part of the
25 parties to contract with each other. The services must be rendered under such circumstances as to indicate that the person
26 rendering them expected to be paid therefor, and that the recipient expected, or should have expected, to pay for them.
Young v. Young, 164 Wn.2d 477, 485-486 (2008) (quoting *Johnson v. Nasi*, 50 Wn.2d 87, 91 (1957)).

01 Thomas-Danzy also argues that the District is bound by its promises to her under an
02 exception to the general rule that employees are terminable at will. In Washington, “if an
03 employer . . . creates an atmosphere of job security and fair treatment with promises of specific
04 treatment in specific situations and an employee is induced thereby to remain on the job and not
05 actively seek other employment, those promises are enforceable components of the employment
06 relationship.” *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 230 (1984) (emphasis in
07 original). Thomas-Danzy was an at-will employee.¹³ The only promise Thomas-Danzy provides
08 is the statement she claims Laurie Taylor made to her to protect her future position and seniority as
09 a CEA. No reasonable trier of fact could find that this statement is a promise of specific treatment
10 in specific situations. Even when viewed in the light most favorable to Thomas-Danzy, this
11 statement, if true, is ambiguous and contains no specific terms suggesting when and under what
12 circumstances the District, or Ms. Taylor, would protect Thomas-Danzy’s position and seniority.
13 Therefore, this exception does not apply.

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15 **E. Thomas-Danzy’s Promissory Estoppel Claim**

16 The District first argues that Thomas-Danzy’s promissory estoppel claim should be
17 dismissed because the claim is incongruent with her contract claim. A promisee may, however,
18 bring a claim for breach of contract and, in addition or in the alternative, a claim for promissory
19 estoppel. *See Flower v. T.R.A. Indus., Inc.*, 127 Wn. App. 13, 30-32 (2005); *see also* Wash.
20 Pattern Jury Instr. Civ. 301A.01 (comment: additional or alternative claims).

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22 ¹³ CEAs have a CBA with the District. *See* Williams Decl. Ex. 4. Thomas-Danzy also refers to an employment contract with
the District in her deposition. *See* Jackson Decl. Ex. 1, at 12.

01 The District next argues that Thomas-Danzy cannot establish the elements of a promissory
02 estoppel claim. In Washington, a party seeking recovery under promissory estoppel must prove
03 the following: (1) a promise that (2) the promisor should reasonably expect to cause the promisee
04 to change her position and (3) that does cause the promisee to change her position (4) justifiably
05 relying upon the promise, in such a manner that (5) injustice can be avoided only by enforcement of
06 the promise. *King v. Riveland*, 125 Wn.2d 500, 506 (1994).

07 The only promise in the record that Thomas-Danzy can base her promissory estoppel claim
08 on is the promise she claims Laurie Taylor made to her to protect her position and seniority as a
09 CEA. This promise cannot support Thomas-Danzy's promissory estoppel claim. When viewed
10 in the light most favorable to Thomas-Danzy, this statement is vague and contains no specific terms
11 or conditions informing Thomas-Danzy when, and under what circumstances, the District or Ms.
12 Taylor would protect Thomas-Danzy's job. Thus, no reasonable trier of fact could conclude that
13 the District or Laurie Taylor should have reasonably expected such a vague and indefinite promise
14 to cause Thomas-Danzy to change her position and refrain from seeking alternative employment.
15 Likewise, Thomas-Danzy was not justified in relying on such a vague and indefinite assurance to
16 protect her job.

17 Moreover, the record does not show that, because Laurie Taylor assured Thomas-Danzy that
18 her job would be protected, Thomas-Danzy detrimentally changed her plans to seek alternative
19 employment, either in general or during the October 20, 2008 to December 5, 2008 period the
20 District sent her home without pay. Indeed, Thomas-Danzy has never looked for another job to
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01 replace her job with the District. See Jackson Decl. Ex. 1, at 12 (Thomas-Danzy Dep. Vol. 2, p.
02 143-44) (“I’ve *never looked for another job outside of the Seattle School District* not being [my]
03 primary job. I’ve looked for second part-time jobs and may have turned down part-time jobs but
04 not replacing my primary [job].”) (emphasis added). Because she never looked for a job to replace
05 her primary employment as a CEA, Thomas-Danzy cannot show that she changed her position in
06 reliance on Laurie Taylor’s assurances.

07 Lastly, failing to enforce the promise, if there was one, would not result in injustice. The
08 District never fired Thomas-Danzy, and the District employed and paid Thomas-Danzy after the
09 October 20, 2008 to December 5, 2008 period it sent her home without pay. Moreover,
10 Thomas-Danzy remains employed by the District to this day.

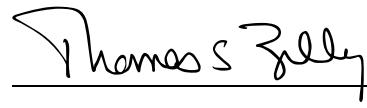
12 **Conclusion**

13 For the foregoing reasons, the Court DENIES the District’s motion to strike
14 Thomas-Danzy’s response as untimely, docket no. 202. The Court also GRANTS IN PART and
15 DENIES IN PART the District’s motion to strike portions of Thomas-Danzy’s response, docket
16 no. 202; accordingly, the Court STRIKES only Exhibit 5 from Thomas-Danzy’s response.
17 Finally, the Court GRANTS the District’s motion for summary dismissal of Thomas-Danzy’s
18 claims, docket no. 193; and DISMISSES this case with prejudice, on the grounds that plaintiff
19 Thomas-Danzy (1) cannot, as a matter of law, establish a prima facie EPA claim; (2) fails to
20 provide evidence that the District breached an implied-in-fact employment contract with her; and
21 (3) fails to provide evidence that establishes a promissory estoppel claim.

01 Pursuant to Fed. R. Civ. P. 54(b), the Court finds that there is no just reason to delay entry of
02 a final judgment as to the plaintiff Thomas-Danzy's claims. Accordingly, the Clerk is
03 DIRECTED to enter partial judgment in favor of the defendant, Seattle School District No. 1, and
04 against the plaintiff, Demetrice Thomas-Danzy, and to send copies of this Order to the counsel of
05 record for Seattle School District No. 1 and Demetrice Thomas-Danzy.

06 IT IS SO ORDERED.
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08 DATED this 16th day of February, 2012.
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11 THOMAS S. ZILLY
United States District Judge
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